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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Brazil, *China, Egypt,* Haiti,* India, Indonesia, Paraguay, Peru,* Senegal,* Sri Lanka,* South Africa, Thailand,* Turkey:* draft resolution

32/... Access to medicines in the context of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Reaffirming the Universal Declaration of Human Rights,

Reaffirming also that the right of everyone to the enjoyment of the highest attainable standard of physical and mental health is a human right as reflected in, inter alia, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, as well as, with respect to non-discrimination, in the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities, and that such a right derives from the inherent dignity of the human person,

Recalling Human Rights Council resolution 23/14 of 24 June 2013 and all relevant previous resolutions and decisions on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health adopted by the Council, the General Assembly and the Commission on Human Rights,

Recalling also the Declaration on the Right to Development, which, inter alia, establishes that States should take, at the national level, all measures necessary for the realization of the right to development and should ensure, inter alia, equality of opportunity for all in their access to basic resources, such as health services,

* State not a member of the Human Rights Council

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Reaffirming General Assembly resolution 70/1 of 27 September 2015, entitled "Transforming our world: the 2030 Agenda for Sustainable Development", in which the Assembly adopted the outcome document of the United Nations summit for the adoption of the post-2015 development agenda, recognizing that eradicating poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development, and envisaging a world free of poverty, hunger, disease and want, a world of universal respect for human rights and human dignity that includes equitable and universal access to health care and social protection, and where physical, mental and social well-being are assured,

Welcoming the Sustainable Development Goals, including, inter alia, Goal 3 to ensure healthy lives and promote well-being for all at all ages, and its specific and interlinked targets, and other health-related Goals and targets,

Taking note with appreciation of the report of the Chairman-Rapporteur of the 2015 Social Forum,[1] held in Geneva from 18 to 20 February 2015,

Noting with appreciation the Human Rights Council panel convened to discuss the progress in and challenges of addressing human rights issues in the context of efforts to end the HIV/AIDS epidemic by 2030, on 11 March 2016,

Noting with appreciation also the Secretary-General's decision to establish a High-level Panel on Access to Medicines, with the mandate to make proposals on how to address policy incoherence in public health, trade, the justifiable rights of inventors, and human rights, and recognizing the participation of the Office of the United Nations High Commissioner for Human Rights in the expert advisory group supporting the Panel,

Noting with concern that, for millions of people throughout the world, the full and equal enjoyment of the right to the highest attainable standard of physical and mental health remains a distant goal,

Concerned about the interrelatedness between poverty and the realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in particular the fact that ill health can be both a cause and a consequence of poverty,

Recognizing that universal health coverage implies that all people have access without discrimination to nationally determined sets of the needed promotive, preventive, curative, palliative, and rehabilitative essential health services, and essential, safe, affordable, efficacious, and quality medicines and vaccines, while ensuring that the use of these services does not expose users to financial hardship, with a special emphasis on the poor, vulnerable, and marginalized segments of the population,

Recognizing also the need for States, in cooperation with international organizations and civil society, including non-governmental organizations and the private sector, including pharmaceutical companies, to create favourable conditions at the national, regional and international levels to ensure the full and effective enjoyment of the right of everyone to the highest attainable standard of physical and mental health,

Noting that actual or potential conflicts exist between the implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights and the realization of economic, social and cultural rights in relation to, inter alia, restrictions on access to patented pharmaceuticals and the implications for the enjoyment of the right to health,

[1] A/HRC/29/44.

Recalling that the Doha Ministerial Declaration on the Agreement on Trade-Related Aspects of Intellectual Property Rights and Public Health confirms that the Agreement does not and should not prevent members of the World Trade Organization from taking measures to protect public health and that the Declaration, accordingly, while reiterating the commitment to the Agreement, affirms that it can and should be interpreted and implemented in a manner supportive of the rights of members of the Organization to protect public health and, in particular, to promote access to medicines for all, and further recognizes, in this connection, the right of members of the Organization to use, to the full, the provisions of the above-mentioned Agreement, which provide flexibility for this purpose,

Regretting the high number of people still without access to affordable, safe, efficacious and quality medicines, and underscoring that improving such access could save millions of lives every year, and noting with deep concern that, according to the World Health Organization in its World Medicines Situations Report of 2011, at least one third of the world population has no regular access to medicines, while recognizing that the lack of access to medicines is a global challenge that affects people not only developing countries but also in developed countries, even though the disease burden is disproportionately high in developing countries,

Concerned at the lack of access to quality, safe, efficacious and affordable medicines for children in appropriate dosage forms, and problems in the rational use of children's medicines in many countries, and that, globally, children aged under five years still do not have secure access to medicines for the treatment of pneumonia, tuberculosis, diarrheal diseases, HIV infection, and malaria, as well as medicines for many other infectious diseases, non-communicable diseases and rare diseases,

Concerned also that the increasing incidence of non-communicable diseases constitutes a heavy burden on society, with serious social and economic consequences, which represent a leading threat to human health and development, and recognizing the urgent need to improve accessibility to safe, affordable, efficacious and quality medicines and technologies to, diagnose and to treat non-communicable diseases, to strengthen viable financing options, and to promote the use of affordable medicines, including generics, as well as improved access to preventive, curative, palliative and rehabilitative services, particularly at the community level,

Expressing deep concern at recent outbreaks of highly infectious pathogens with epidemic potential, which demonstrate the potential vulnerability of populations to them and, in this context, reaffirming and underscoring the importance of the development of new and innovative medicines and vaccines and of ensuring access to safe, affordable, efficacious and quality medicines and vaccines to all, as well as strengthening health system capacities for preventing and responding to outbreaks,

Recalling the Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property of the World Health Organization, and commending the efforts of the Organization to fill gaps in health research and development for the relevant needs of developing countries, including neglected diseases and potential areas where market failure exists, through the follow-up to the report of the Consultative Expert Working Group on Research and Development, and reiterating that health research and development should be needs-driven, evidence-based, guided by the core principles of affordability, effectiveness, efficiency, and equity, and considered a shared responsibility,

1. *Recognizes* that access to medicines is one of the fundamental elements in achieving progressively the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;

2. *Stresses* the responsibility of States to ensure access for all, without discrimination, to medicines, in particular essential medicines, that are affordable, safe, efficacious and of quality;

3. *Calls upon* States to promote access to medicines for all, including through the use, to the full, of the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights which provide flexibility for that purpose, recognizing that the protection of intellectual property is important for the development of new medicines, as well as the concerns about its effects on prices;

4. *Also calls upon* States to take steps to implement policies and plans to promote access to comprehensive and cost-effective prevention, treatment and care for the integrated management of non-communicable diseases, including, inter alia, increased access to affordable, safe, efficacious and quality medicines and diagnostics and other technologies, including through the full use of Trade-Related Aspects of Intellectual Property Rights flexibilities;

5. *Reiterates* the call upon States to continue to collaborate, as appropriate, on models and approaches that support the delinkage of the cost of new research and development from the prices of medicines, vaccines and diagnostics for diseases that predominantly affect developing countries, including emerging and neglected tropical diseases, so as to ensure their sustained accessibility, affordability and availability and to ensure access to treatment for all those in need;

6. *Calls upon* the international community to continue to assist developing countries in promoting the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, including through access to medicines that are affordable, safe, efficacious and of quality, and through financial and technical support and training of personnel, while recognizing that the primary responsibility for promoting and protecting all human rights rests with States;

7. *Recognizes* the innovative funding mechanisms that contribute to the availability of vaccines and medicines in developing countries, such as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the Gavi Alliance and UNITAID, and calls upon all States, United Nations agencies, funds and programmes, in particular the World Health Organization, and relevant intergovernmental organizations, within their respective mandates, and encourages relevant stakeholders, including pharmaceutical companies, while safeguarding public health from undue influence by any form of real, perceived or potential conflict of interest, to further collaborate to enable equitable access to quality, safe and efficacious medicines that are affordable to all, including those living in poverty, children and other persons in vulnerable situations;

8. *Urges* all States, United Nations agencies and programmes and relevant intergovernmental organizations, especially the World Health Organization, within their respective mandates, and encourages non-governmental organizations and relevant stakeholders, including pharmaceutical companies, to promote innovative research and development to address health needs in developing countries, including access to quality, safe, efficacious and affordable medicines, and in particular with regard to diseases disproportionately affecting developing countries, and the challenges arising from the growing burden of non-communicable diseases, taking into account the Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property of the World Health Organization;

9. *Invites* the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, while considering the many ways towards the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, to continue to focus on the human rights

dimension of access to medicines when discharging his or her duties, in accordance with his or her mandate;

10. *Invites* Member States and all stakeholders, including relevant United Nations bodies, agencies, funds and programmes, treaty bodies, special procedure mandate holders, national human rights institutions, civil society, and the private sector, to promote policy coherence in the areas of human rights, intellectual property and international trade and investment when considering access to medicines;

11. *Decides* to convene, at its thirty-fourth session, a panel discussion to exchange views on good practices and key challenges relevant to access to medicines as one of the fundamental elements of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, taking into account all relevant reports, and that the discussion shall be fully accessible to persons with disabilities;

12. *Invites* the United Nations High Commissioner for Human Rights to liaise with States and all stakeholders, including relevant United Nations bodies, agencies, funds and programmes, treaty bodies, special procedure mandate holders, national human rights institutions and civil society, with a view to ensuring their participation in the panel discussion;

13. *Requests* the High Commissioner to prepare a summary report on the panel discussion to submit it to the Human Rights Council at its thirty-sixth session;

14. *Requests* the Advisory Committee to undertake, from within existing resources, a study which reviews progress and achievements on access to medicines in the context of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with challenges and obstacles thereto, and to submit it to the Human Rights Council at its thirty-eighth session;

15. *Encourages* the Advisory Committee, when preparing the above-mentioned study, to take into account the views of Member States, and all relevant stakeholders, including relevant United Nations bodies, agencies, funds and programmes, especially the World Health Organization, treaty bodies, special procedure mandate holders, national human rights institutions and civil society, as well as their work on the issue;

16. *Calls upon* Governments and all relevant stakeholders, including relevant United Nations bodies, agencies, funds and programmes, treaty bodies, special procedure mandate holders, national human rights institutions and civil society, to cooperate with the study of the Advisory Committee.